additional evidence of the defendant's negligence merely meant that he had more than enough evidence upon which to go to the jury. Under these circumstances an instruction giving him the benefit of the doctrine, even though unnecessary, was harmless. The real fault below seems to have been that the court instructed the jury that the doctrine of *res ipsa loquitur* warranted a "presumption of law" in favor of the plaintiff and from this the jury might well have thought that it was not free to draw any other inference than negligence.

PRESUMPTIONS — EXISTENCE AND EFFECT OF PRESUMPTIONS IN PARTICULAR CASES — OPERATIONS AGAINST STATE OF PRESUMPTION OF LOST GRANT. — In an action in equity to confirm title to real estate the plaintiff showed a 1907 patent from the state, the state having bought at a tax sale in 1872. The defendant claimed under deeds executed in 1884 and 1890, and showed he had been in undisturbed possession for over thirty years. The records prior to 1884 had been burned. *Held*, that the plaintiff's action be dismissed since a grant from the state to defendant would be presumed. *Caruth* v. *Gillespie*, 68 So. 927 (Miss.).

For a discussion of the principles involved in allowing such a presumption to operate against the state, see NOTES, p. 88.

PRESUMPTIONS — SIMILARITY OF LAW OF SISTER STATE — CONSTITUTION. — In a suit for the conversion of the proceeds of a carload of feed, the defendant alleged that he had received the money under a garnishment judgment of a Tennessee justice's court. He gave no evidence as to the law of Tennessee. Under both the Code and Constitution of Iowa, a justice's court could not have had jurisdiction to render such a judgment. *Held*, that the plaintiff cannot recover. *Droge Elevator Co.* v. *W. P. Brown Co.*, 151 N. W. 1048 (Ia.).

In the absence of evidence, most courts presume that the common law of a sister state is similar to that of the forum, provided that they are of common origin. *Cherry* v. *Sprague*, 187 Mass. 113, 72 N. E. 456. *Cf. Peet* v. *Hatcher*, 112 Ala. 514, 21 So. 711. See 4 WIGMORE, EVIDENCE, § 2536. In some states, among them Iowa, this presumption has unfortunately been extended to statutory law. *McMillan* v. *American Express Co.*, 123 Ia. 236, 98 N. W. 629. See A. M. Kales, "Presumption of Foreign Law," 19 HARV. L. REV. 401, 410. In such states, when a statute of another state is proved, it should be presumed to be constitutional. *Fidelity Ins. Co.* v. *Nelson*, 30 Wash. 340, 70 Pac. 961. But where such a statute has not been proved, there is no ground upon which the presumption of an enactment should be refused merely because it happens to appear in the constitution rather than the statute book. *Cook* v. *Chicago, R. I. & P. Ry. Co.*, 78 Neb. 64, 110 N. W. 718. *A fortiori*, it is inconsistent to refuse to presume the uniformity of law when, as in the principal case, both the statutes and the constitution govern the subject. It is submitted that the better rule to be applied in such cases is for the court to take judicial notice of the laws of all the states. Such a rule could only be effected by legislation, but this has been done in a few jurisdictions. See W. VA. CODE, 1906, c. 13, § 4; MISS. CODE, 1906, § 1015.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — CHANGE IN CHARACTER OF LOCALITY AS GROUND FOR DECREE QUIETING TITLE. — A conveyance subject to the restriction that only dwelling houses should be erected on the property was made at a time when the property was in a choice residential district. Since then the neighborhood has been wholly given over to manufacturing of an offensive kind. *Held*, that the restriction is terminated, and that equity will remove it as a cloud on title. *McArthur* v. *Hood Rubber Co.*, 109 N. E. 162 (Mass.).

Courts of equity usually regard agreements restricting the use of land as contract rights. Thus, in the exercise of their discretion, they deny specific

performance and leave the plaintiff to his remedy at law whenever the character of the locality has so changed as to defeat the purpose of the agreement and render its enforcement inequitable. *Trustees of Columbia College* v. *Thacher*, 87 N. Y. 311; *McClure* v. *Leaycraft*, 183 N. Y. 36; *Page* v. *Murray*, 46 N. J. Eq. 325. But these agreements are more properly regarded as creating equitable property rights. See 21 HARV. L. REV. 139. Where such rights exist, equity, having exclusive jurisdiction, has no discretion as to not enforcing them. Nevertheless, the Massachusetts court, in a previous case, denied specific performance and awarded damages. *Jackson* v. *Stevenson*, 156 Mass. 496. *Cf. Amerman* v. *Deane*, 132 N. Y. 355. Such a decree, although it might be explained on the theory that equity is thus protecting the right while exercising its discretion as to the form of the remedy, is in effect a judicial condemnation of an equitable property right. The principal case abandons this position and is the first decision definitely adopting the more logical view that, when the object of a restrictive agreement can no longer be attained, the restriction ceases to exist. *Cf. German* v. *Chapman*, 7 Ch. D. 271, 279; *Knight* v. *Simmonds*, [1896] 2 Ch. 294, 297.

TAXATION — PARTICULAR FORMS OF TAXATION — SUCCESSION TAX: REGISTERED BONDS OF THE TAXING STATE KEPT BY NON-RESIDENT AT HIS DOMICILE. — A registered bond of the Commonwealth of Massachusetts was kept by a non-resident at his domicile in New York. *Held*, that it is taxable under the Massachusetts Succession Tax. *Bliss* v. *Bliss*, 109 N. E. 148 (Mass.).

Succession taxes are regarded as taxes not on property, but on the privilege of succeeding to property. *Matter of Merriam*, 141 N. Y. 479, 36 N. E. 505; *Plummer* v. *Coler*, 178 U. S. 115. Accordingly it has been held that a state may tax the succession to negotiable bonds owned by residents, even when kept abroad, on the reasoning that the privilege of succession is derived from the law of the owner's domicile. *Frothingham* v. *Shaw*, 175 Mass. 59, 55 N. E. 623. On the other hand, it has been laid down that power over the person of the debtor, instead of the creditor, confers taxing jurisdiction over the transfer of the debt. *Blackstone* v. *Miller*, 188 U. S. 189. More accurately stated, the correct principle is, that jurisdiction depends upon control of the transfer. In the principal case, since the transfer must be completed by a change of registration, which could be enforced only by resort to the Massachusetts courts, the bond was properly held taxable under the Massachusetts statute. An earlier case has decided that a state cannot levy a succession tax on foreign-owned negotiable bonds of a domestic corporation when kept abroad, a question expressly left open in the principal case. *Matter of Bronson*, 150 N. Y. 1, 44 N. E. 707.

TROVER AND CONVERSION — EXCHANGE OF SECURITIES BY PLEDGEE — NEED IMPAIRMENT OF PLEDGOR'S SECURITY BE SHOWN? — The defendant loaned money to the plaintiff and took as security a third person's note protected by mortgage. This mortgage he exchanged with the mortgagor for one on another portion of the same premises. Though his security was not impaired by the change, the plaintiff sues for the conversion of the first mortgage. *Held*, that he cannot recover. *Madden* v. *Condon National Bank*, 149 Pac. 80 (Ore.).

That the defendant's dealing with the mortgage was unjustified is clear: holders of collateral security have no right to exchange it with the makers, nor to compromise it. *Garlick* v. *James*, 12 Johns. (N. Y.) 146; *Depuy* v. *Clark*, 12 Ind. 427; *Wood* v. *Mathews*, 73 Mo. 477. But *cf. Girard Fire Insurance Co.* v. *Marr*, 46 Pa. St. 504. See *contra*, COLEBROOKE, COLLATERAL SECURITIES, 2 ed., 26. This being so, what the defendant did amounted to a conversion of the mortgage. *Stevens* v. *Wiley*, 165 Mass. 402, 43 N. E. 177. See *Brown* v.